

**DECISION**



**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D.C. 20548

26309

**FILE:** B-212810

**DATE:** September 20, 1983

**MATTER OF:** Crawford Technical Services, Inc.

**DIGEST:**

1. GAO does not consider small business size status since by law conclusive authority over the matter is vested in the Small Business Administration.
2. No basis exists to preclude a contract award merely because the low bidder may have submitted a below-cost bid.
3. GAO will not review an affirmative determination of responsibility except in limited circumstances not applicable here.

Crawford Technical Services, Inc. (Crawford), protests award of a contract to Total Maintenance, Inc. (TMI), under invitation for bids (IFB) DAKF48-83-B-0074, issued by the Department of the Army (Army), Fort Hood, Texas, for motor vehicle repair services.

We dismiss the protest. We do so without obtaining a report from the contracting agency, in accordance with section 21.3 of our Bid Protest Procedures, 4 C.F.R. § 21.3, as amended, January 17, 1983, 48 Fed. Reg. 1931 (1983), since the protest shows that one basis of the protest concerns a matter under the conclusive jurisdiction of another agency and the second basis of protest is without legal merit.

Five bids were received at bid opening. TMI was low bidder and Crawford was second low bidder. The procurement is a total small business set-aside.

Crawford contends, first, that TMI is controlled by a large business, J & J Maintenance, Inc., and is, therefore, ineligible for award under this solicitation. Crawford contends, second, that TMI cannot perform the contract at the amount bid.

Under 15 U.S.C. § 637(b)(6) (1982), the Small Business Administration has conclusive authority to determine matters

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of small business size status for Federal procurement purposes. Therefore, our Office does not consider size status protests. See Bid Protest Procedures, 4 C.F.R. § 21.3(g)(2), added by 48 Fed. Reg. 1932 (1983); Randall Manufacturing Company, Inc., B-211861, June 9, 1983, 83-1 CPD 640.

The question of whether the bidder can perform the contract at its bid price is a question which relates to a bidder's responsibility. Absent a determination of nonresponsibility, the submission of a below-cost bid is not a valid basis upon which to challenge an award. Neither will a contracting officer's affirmative determination of responsibility be reviewed by this Office absent a showing that the contracting officer acted fraudulently or in bad faith, or that definitive responsibility criteria in the solicitation have not been met. Ericson Manufacturing Company, B-208755, October 1, 1982, 82-2 CPD 306. Crawford does not allege either exception here.

*Harry R. Van Cleve*

Harry R. Van Cleve  
Acting General Counsel